

U. S. DISTRICT COURT
N. D. OF N. Y.
FILED

JUN 07 2005

AT _____ O'CLOCK _____ M
LAWRENCE K. DAERMAN, Clerk
UTICA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PAUL MARCO,

Petitioner,

vs

1:05-CV-353

UNITED STATES OF AMERICA,

Respondent.

APPEARANCES:

OF COUNSEL:

PAUL MARCO, Pro Se
10251-052
FCI McKean
P.O. Box 8000
Bradford, PA 16701

HON. GLENN T. SUDDABY
United States Attorney
Attorney for Respondent
Northern District of New York
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Syracuse, New York 13261-5165

WILLIAM C. PERICAK, ESQ.
Assistant U.S. Attorney

DAVID N. HURD
United States District Judge

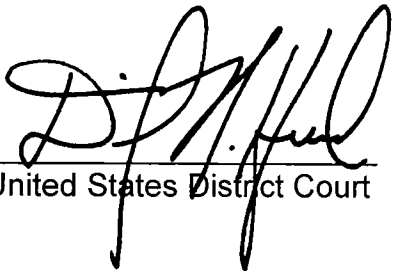
ORDER

Petitioner complains that his 18 month sentence on August 3, 2004, was illegal. He spent 179 days (6 months) in custody prior to the sentence. The period for December 4, 2003, to January 24, 2004, (52 days) while the petitioner was in a day treatment program is not considered custody. The maximum sentence allowed is 24 months. Therefore, the 18 month sentence was legal.

The other reasons set forth by the respondent as a basis to deny the motion need not be considered.

Therefore, the motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 is DENIED.

IT IS SO ORDERED.



United States District Court

Dated: June 7, 2005
Utica, New York.